

# **Lincoln, Emancipation, and the Constitution**

## **By Jennifer Rosenfeld**

**Prepared for the Organization of American Historians**  
**Used with Permission**

### **Introduction**

When Abraham Lincoln took the oath of office as president of the United States in 1861, the country was on the verge of civil war: seven southern states had seceded from the Union soon after Lincoln's election, the Upper South and border states of Tennessee, Arkansas, North Carolina Virginia, Kentucky, Maryland, Delaware and Missouri threatened to follow their southern colleagues and public unrest in the northern states was evident. On March 4, 1861, in the midst of this crisis, Lincoln stood on the steps of the U.S. Capitol and swore to "faithfully execute the office of President of the United States" and to the best of his ability, "preserve, protect and defend the Constitution of the United States." Did Lincoln follow that oath or did he abuse his power as president during the Civil War and damage the Constitution he had sworn to protect?

While most historians today consistently rank Lincoln as America's greatest president, in his own time, many people thought him to be a tyrant who trampled upon the Constitution (1). To prove the point, Lincoln's critics cited his suspension of the writ of habeas corpus, they criticized his use of military force, and they questioned his right as president to seize private property or limit the freedom of the press.

Perhaps the most constitutionally controversial of Lincoln's actions during the war was the one he took the greatest pains to resolve through the limits of the law, the question of emancipation (2). Opponents on both sides of the issue questioned his actions. Abolitionists urged him to use his power as president to move quickly to destroy the "evil elements in the Constitution" and were disappointed when he did not immediately abolish slavery during the first few months of his presidency. Slaveholders saw his actions on emancipation as confirming their fears that Lincoln would trample their "property rights."

How was Lincoln able to use the rule of law to help bring about the end of slavery? How did he balance his moral and legal views of slavery?

This lesson will ask students to analyze and compare Lincoln's thoughts and legal actions regarding emancipation beginning with bill he proposed to the House of Representatives in 1849 until the ultimate success of the passage of the Thirteenth Amendment in 1865. The challenge of this lesson is that it deals with the rather abstract concept of the rule of law. But the overriding question that Lincoln wrestled with in dealing with the constitutional issue of emancipation is one that young people can relate to: do the ends justify the means?

## **National Standards**

**Era 5:** Civil War and Reconstruction (1850-1877)

**Standard 1A:** Explain the causes of the Civil War and evaluate the importance of slavery as a principal cause of the conflict.

**Standard 2A:** Evaluate the provisions of the Emancipation Proclamation, Lincoln's reasons for issuing it, and its significance.

## **Time Frame**

This series of lessons can be completed in three or four 45-50 minute class periods. If the extension activities are introduced, please allow for at least half of a class period extra per activity.

## **Student Objectives**

1. To explore the U.S. Constitution and see how Lincoln worked within its constraints to forward emancipation.
2. To trace Lincoln's and Congress's attempts to curb or end slavery and judge their effectiveness.
3. To explain the impact of the Emancipation Proclamation.
4. To explain why the Thirteenth Amendment was necessary after the Emancipation Proclamation.
5. To interpret primary source materials.

## **Background and Preparation**

This lesson is suitable for a U.S. History class that is currently studying the U.S. Civil War era or for a government or civics class studying the U.S. Constitution.

If the teacher wanted to place all the web site links to the primary source materials on a home page for the unit, this lesson could be structured as an online web quest.

Alternatively, the teacher could print out copies of the documents and no computer access would be needed during the class period.

Prior to the lesson, it would be helpful for the students to review the Constitution and be familiar with the role of both the Congress (Article I) and the President (Article II). For homework the night before the lesson, ask students to find how many times the word "slavery" or "slave" appears in the Constitution. (Note: This is a trick question since there is no direct reference to the word "slave" or "slavery" in the Constitution.)

When Lincoln assumed the presidency, these were the sections of the Constitution that alluded to slavery:

Article I, section 2, also known as the "3/5 Compromise," states that apart from free persons and indentured servants, three-fifths of "all other persons, excluding Indians not taxed" are to be counted for the purpose of apportioning congressional representatives on the basis of population.

Article I, section 9 states that the importation of “such Persons as any of the States now existing shall think proper to admit,” meaning slaves, would be permitted until 1808.

Article IV, section 2 directs that persons “held to Service or Labour in one State, under the Laws thereof, escaping into another,” meaning fugitive slaves, were to be returned to their owners.

The Bill of Rights, also does not specifically mention slavery, but the Fifth Amendment guaranteed that no person could “be deprived of life, liberty, or property, without due process of law.” Consequently, the issue of “slaves as property” became quite contentious. In 1820, Congress passed the Missouri Compromise, which limited slavery in the old Louisiana Territory to lands south of the 36° 30’ parallel. In 1857, however, the Supreme Court, in its *Dred Scott* decision, declared the Missouri Compromise unconstitutional as a violation of the Fifth Amendment because it prevented slaveholders from bringing their slave property to federal territories north of the 36° 30’ parallel.

Despite the *Scott* decision, southern states continued to fear that the election of Lincoln threatened an attack on slavery and in his first Inaugural Address, Lincoln attempted to allay these fears. In this first part of the lesson, students will examine the Constitution that Lincoln knew and explore his earliest thoughts as president about his constitutional role regarding slavery.

### **Procedure for Lesson One:**

#### **Lincoln’s View of Slavery and the Constitution**

1. When students report back that they could find no direct reference to the words “slave” or “slavery” in the Constitution, have them discuss as a class why that might be. What references did they find to the concept of slavery? List them as a class and have students explain their meaning. Ask the students why they think slavery was not mentioned.

2. Provide the students with the excerpted copies of Lincoln’s seventh debate with Stephen A. Douglas which presents Lincoln’s view of why the Constitution does not mention slavery: “In all three of these places, being the only allusions to slavery in the instrument, covert language is used. Language is used not suggesting that slavery existed or that the black race were among us. And I understand the contemporaneous history of those times to be that covert language was used with a purpose, and that purpose was that in our Constitution, which it was hoped and is still hoped will endure forever—when it should be read by intelligent and patriotic men, after the institution of slavery had passed from among us—there should be nothing on the face of the great charter of liberty suggesting that such a thing as negro slavery had ever existed among us.”

Ask the students to summarize Lincoln’s points and ask the students to explain in their own words why Lincoln thought slavery was not mentioned in the Constitution.

3. Give the students a copy of Lincoln’s First Inaugural Address and highlight the following quote: “*I have no purpose, directly or indirectly, to interfere with the institution of slavery in the States where it exists. I believe I have no lawful right to do so, and I have no inclination to do so.*” Ask the students to read the entire address and then answer the following questions:

a. Why does Lincoln feel he has no lawful right to “interfere with slavery”?

b. In what ways does he recommend that the issue be dealt with?

Which does he seem to favor? Why do you think he favors this way?

Also provide them with this quote from a letter Lincoln wrote to Albert G. Hodges, editor of the Frankfort, KY, *Commonwealth* in 1864: “I am naturally anti-slavery. If slavery is not wrong, nothing is wrong. And yet I have never understood that the Presidency conferred upon me an unrestricted right to act officially upon this judgment and feeling. It was in the oath I took that I would, to the best of my ability, preserve, protect and defend the Constitution of the United States. I could not take the office without taking the oath. Nor was it my view that I might take an oath to get power, and break the oath in using the power.”

c. How does the letter to Hodges confirm what Lincoln said in his Inaugural Address?

4. Divide the class in to three groups:

**Free States:** These northern states comprised the Union during the Civil War. Originally united in their defense of the Constitution and the Union—but not in regard to the issue of slavery—these northern states eventually agreed to support the idea of emancipation.

**Border States:** The states of Kentucky, Maryland, Delaware, and Missouri. These states legally allowed slavery, but had not yet decided to join with the other slaveholding states and secede from the Union. This group was very interested in seeing how the issue of slavery would be handled.

**Southern Confederacy:** Formed in 1861, the Confederate States of America was a republic of eleven slave states that had seceded from the Union “in order to preserve slavery, states’ rights and political liberty for whites.” The Confederacy consisted of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas and Virginia (3).

Ask the students to prepare newspaper editorials that would reflect how their particular group might have reacted to what Lincoln said about the issue of slavery in his inaugural address. Have the three groups read each others editorials and respond to what the other groups have written.

This next part of the unit will ask students to explore Lincoln’s various options for Emancipation that fall into two main categories: legislative solutions and martial law.

### **Procedure for Lesson Two:**

#### **The D.C. Emancipation Act of 1862:**

##### **A Legislative Solution**

On January 10, 1849, a young first-term congressman from Illinois, Abraham Lincoln, proposed a bill to outlaw slavery in the District of Columbia, though no official action was ever taken on it. When he was president, however, Lincoln was able to finally see

slavery abolished in the District of Columbia when he signed the D.C. Emancipation Act into law on April 16, 1862. This act allowed for the emancipation of all slaves within the District of Columbia, paid compensation to loyal slaveholders and offered colonization to Liberia or Haiti for newly freed blacks. The 1862 Act is very similar to the one Lincoln introduced in 1849 and it is the only example of compensated emancipation in the country's history (4).

1. Ask the class to define the following terms as a class:

- a. Emancipation
- b. Compensation
- c. Colonization

2. Pass out copies of the D.C. Emancipation Act, instruct the students to read the entire document and then have them explain which part of the act deals with each of the three words the class defined. 3. In small groups, have the students analyze the document by answering the following questions:

- a. After reading section 2, what does a slaveowner need to provide in order to be compensated? To whom must he supply this information?
- b. According to this act, who cannot get compensated? Why?
- c. How can a former slave prove his or her freedom?
- d. What provisions are made for the former slaves?

4. Ask the students to consider how the following people might have felt after this act's passage and have them role play or write their responses:

A female house slave in Washington

A district slaveholder

A southern planter

A border state slaveholder

5. Have students look at Article I, section 8 of the U.S. Constitution.

How does this explain why Congress and Lincoln felt constitutionally justified in creating such an act?

Extension activity:

Historians have speculated on how much influence President Lincoln had on the D.C.

Emancipation Act. Have students compare Lincoln's 1849 bill with the 1862 D.C.

Emancipation Act. How are the two documents similar? How are they different? What does this lead you to believe about Lincoln's role in the 1862 act? How might Lincoln's different positions as congressman and president affect this discussion?

### **Procedure for Lesson Three:**

#### **A legislative solution or an act of war?**

#### **The Second Confiscation Act:**

Shortly after the D.C. Emancipation Act became law, Congress turned its attention to amending the Confiscation Act of 1861 which gave the Union army the right to seize rebel property, including slaves. The Second Confiscation Act was passed on July 17, 1862 and stated that all slaves belonging to citizens in rebellion against the Union were now free and that former slaves could be employed in the Union army. Lincoln did not want to originally support the act because he was worried about the reaction of the border states, but he later convinced Congress to support a plan for compensation to states that implemented gradual emancipation. Despite these efforts, the border states did not take up this option (5).

1. Provide students with a copy of the Second Confiscation Act of July 1862 and a copy of Lincoln's Emancipation Proclamation. Be sure to remind the students that at this time, slaves were considered the property of their owners and had no rights as citizens.
2. As a class, define the following terms:

Confiscation  
Emancipation

Working in small groups, ask the students to answer the following questions:

- a. Who created this document? What part of the Constitution gave them the authority to create this?
- b. When did it become effective?
- c. What is the purpose of this document?
- d. What parts of the country does it apply to?
- e. Who does it apply to?
- f. Who is supposed to enforce this act?
- g. What is to happen to the slaves mentioned in the document?
- h. Are there any exceptions? Why?

## **Preliminary Emancipation Proclamation, July 22, 1862:**

In the sixth section of the Second Confiscation Act, the act calls for the President to issue a “public warning and proclamation” to all citizens in “armed rebellion against the government of the United States” that if they did not stop their rebellion within sixty days, the president had the right to seize their property, including their slaves. Lincoln used this provision in the Confiscation Acts as the legal basis for issuing the Emancipation Proclamation, yet he was always concerned that the war powers he invoked could be easily overturned in a court of law. Have the student examine the sixth section of the Confiscation Act, and then have them examine the first draft of the Emancipation Proclamation. Ask them to find the reference to the Confiscation Acts in that draft.

1. Working in small groups, have the students examine the Preliminary Emancipation Proclamation and answer the following:

- a. What references to the Confiscation Acts can be found in the Preliminary Proclamation?
- b. What authority did Lincoln cite for creating the proclamation?
- c. What parts of the country did it impact?
- d. Who was affected?
- e. What does the preliminary proclamation say will happen on January 1, 1863?

2. After discussing their answers as a class, have them next examine the Final Emancipation Proclamation, issued January 1, 1863 and ask them to compare it to the Preliminary Draft in the following ways: What authority did Lincoln cite for the proclamation? What parts of the country did it impact? Are they different from the preliminary draft? Why?

3. Lincoln was always concerned that his use of the presidential war powers clause might not hold up in a court of law. Have students examine the war powers clause in the Constitution to refresh their understanding. Ask the students to examine a letter Lincoln wrote to Albert G. Hodges, editor of the Frankfort, KY, *Commonwealth* in 1864 in which he wrote of his struggle to defend the Constitution and deal with the moral question of slavery.

- a. According to this letter, what did Lincoln see as his primary duty?
- b. What did Lincoln see was the moral difficulty he faced?
- c. Ask students to compare these thoughts of Lincoln to those he expressed in his first Inaugural Address. Did his thinking change?

4. Lincoln said the Emancipation Proclamation was “the central act of my administration, and the great event of the nineteenth century.” Yet he also wrote, “a question might be raised whether the proclamation is legally valid” and he worried whether it would “have

no effect upon the children of the slaves born hereafter (6).” For example, have the students compare these two passages:

From the Preliminary Proclamation:

*“and by virtue of the power, and for the purpose aforesaid, I do order, and declare, that all persons held as slaves within said designated States, and parts of States, are, and henceforward forever shall be free...”*

From the Final Emancipation Proclamation:

‘And by virtue of the power, and for the purpose aforesaid, I do order and declare that all person held as slaves within said designated States, and parts of States, are, and henceforward shall be free...”

a. What is the difference in these two passages?

b. Based on what you know about Lincoln’s fears that the Proclamation might be overturned, why might Lincoln have changed the wording even slightly?

For class discussion: How could Lincoln have felt both proud and fearful about the Emancipation Proclamation? What does this quote tell you about why he might have wanted to work on a constitutional amendment to abolish slavery?

Extension Activity: Looking at Reactions to the Emancipation Proclamation’s Constitutionality

After issuing the Emancipation Proclamation, Lincoln took much criticism from both his friends and his enemies. Show the students the political cartoon, “Lincoln Writing the Emancipation Proclamation.” Ask the students to explain how the symbols in the cartoon show how the cartoonist felt about Lincoln’s treatment of the Constitution.

Ask the students to depict in a political cartoon their view of how Lincoln treated the Constitution in regard to slavery.

#### **Lesson Four: “A King’s Cure”:**

##### **The Thirteenth Amendment 1865**

Lincoln knew that opponents would try to overturn the Emancipation Proclamation on the grounds that it was an unconstitutional use of presidential war powers and there was also the fear that the proclamation would not stand legally once the war had ended. Rather than wait to see how the courts might respond, Lincoln felt that the passage of an amendment that would constitutionally abolish slavery forever would legally secure the end of slavery (7).

1. In order to have students see the legal power and strength of the Thirteenth Amendment, have them answer the same questions on the handout that they did for the Confiscation Acts and the Emancipation Proclamation. Pose the question: Based on your



analysis, which document is most effective for winning the war and why? Which is the most effective, legally and constitutionally speaking, for emancipation and why?

2. Share with the class that though the Constitution does not require the president to sign a new amendment to the Constitution, Lincoln was so pleased with the Congress's passage of the Thirteenth Amendment that he signed the Joint Resolution submitting the Amendment to the states for ratification. Ask students to consider Lincoln's assessment: "This amendment is a King's cure for all evils. It winds the whole thing up." Why might he feel this way?

### **Conclusion: Questions for the entire unit**

Some historians and constitutional scholars have said that Lincoln "bent" the Constitution to serve his purposes. Do you agree or disagree with this statement in regard to Lincoln's treatment of the Constitution and the issue of slavery? Explain.

In his early career, Lincoln had expressed that for emancipation to work, it needed to "have the three main features—gradual, compensation, and the vote of the people (8)." Out of the documents the class has studied in this lesson: the DC Emancipation Act, the Confiscation Acts, and the Emancipation Proclamation—which of the documents fits best with Lincoln's early philosophy?

Historian Richard Hofstadter said the Emancipation Proclamation "had all the moral grandeur of a bill of lading" while historian Allen Guelzo has called it a "ticket to freedom" (9). With which do you agree?

Lincoln used the war as the reason why he had to take the strong executive actions that he did to help bring about the end of slavery. Based on the documents you have explored in this lesson, do you feel Lincoln stayed true to his belief in the rule of law while at the same time staying true to his belief that "if slavery is not wrong, nothing is wrong."?

### **Bibliography and Suggestions for Further Reading**

Anastaplo, George. *Abraham Lincoln: A Constitutional Biography*. New York: Rowman and Littlefield Publishers, Inc, 1999.

Farber, Daniel. *Lincoln's Constitution*. Chicago: University of Chicago Press, 2003.

Guelzo, Allen C. *Lincoln's Emancipation Proclamation: The End of Slavery in America*. New York: Simon and Schuster, 2004.

Holzer, Harold, Edna Greene Medford, and Frank J. Williams. *The Emancipation Proclamation: Three Views*. Baton Rouge: Louisiana State University Press, 2006.

Lincoln, Abraham, *Lincoln: Speeches and Writings, 1832-1858*. Don E. Fehrenbacher, ed. New York: The Library of America, 1989.

### **Online Primary Sources for Students**

- United States Constitution: <<http://www.law.cornell.edu/constitution/constitution.article1.html#section8>>. Note: Underlined sections indicate a particular section which has been struck from the document

- Lincoln-Douglas Seventh Debate in Alton, IL Oct.15, 1858:  
<<http://www.nps.gov/liho/debate7.htm>>.
  - Second Confiscation Act: <<http://www.history.umd.edu/Freedmen/conact2.htm>>.
  - A Bill to Abolish Slavery in the District of Columbia:  
<<http://memory.loc.gov/cgi-bin/ampage?collId=mal&fileName=mal1/004/0042500/malpage.db&recNum=0>>.
  - First Draft of the Emancipation Proclamation: July 22, 1862: <<http://memory.loc.gov/ammem/alhtml/almss/dep001.html>>.
  - Preliminary Emancipation Proclamation: <[http://www.archives.gov/exhibits/american\\_originals\\_iv/sections/preliminary\\_emancipation\\_proclamation.html#](http://www.archives.gov/exhibits/american_originals_iv/sections/preliminary_emancipation_proclamation.html#)>.
  - The Emancipation Proclamation: <[http://www.archives.gov/exhibits/featured\\_documents/emancipation\\_proclamation/index.html](http://www.archives.gov/exhibits/featured_documents/emancipation_proclamation/index.html)>.
- Note: To see a transcription:  
<[http://www.archives.gov/exhibits/featured\\_documents/emancipation\\_proclamation/transcript.html](http://www.archives.gov/exhibits/featured_documents/emancipation_proclamation/transcript.html)>.
- Letter from President Lincoln to Albert G. Hodges, editor of the Frankfort, KY, *Commonwealth*, April 4, 1864. Autograph draft, 3pp. The Robert Todd Lincoln Family Papers, Manuscript Division Library of Congress: <<http://rs6.loc.gov/ammem/alhtml/almss/ln001.html>>.
  - Political cartoon: Lincoln Writing the Emancipation Proclamation:  
<<http://www.indiana.edu/~liblilly/cartoon/confederate3.html>>.
  - The District of Columbia Act of 1849 is available in *Lincoln: Speeches and Writings, 1832-1858*, Don E. Fehrenbacher, ed., (New York: Library of America, 1989), 227-29.

## Endnotes

1. C-SPAN Survey of Presidential Leadership. Historian Survey results, 1999.  
(<http://www.americanpresidents.org/survey/historians/>.)
2. Allen Guelzo, *Lincoln's Emancipation Proclamation: The End of Slavery in America*, (Simon and Schuster: New York, 2004), 224-25.
3. Frank E. Vandiver, Eric Foner and John A. Garraty, eds., "Confederate States of America," *The Readers Companion to American History*, (New York: Houghton Mifflin Company, 1991), 210.
4. The District of Columbia Emancipation Act., The National Archives. 25 May 2006.  
<[http://www.archives.gov/exhibits/featured\\_documents/dc\\_emancipation\\_act/](http://www.archives.gov/exhibits/featured_documents/dc_emancipation_act/)>.
5. "Confiscation Acts," *Encyclopedia Britannica*, 2006. Encyclopedia Britannica Premium Service, 21 June 2006 <<http://www.britannica.com/eb/article-9025837>>.
6. Guelzo, 262.
7. Ibid., 260.
8. Ibid., 24.
9. Ibid., 2-12.

*Jennifer L. Rosenfeld is the Program Director for the Abraham Lincoln Bicentennial Commission. Prior to her work with the commission, Ms. Rosenfeld created educational materials and programs for school, youth, and family audiences as Education Director for The Long Island Museum in Stony Brook, NY, and for the Old York*

*Historical Society in York, ME. She has also consulted on museum education issues and served as a grant reviewer for the National Endowment for the Humanities. Ms. Rosenfeld holds a B.A. in history from the College of William and Mary and an M.A. in history museum studies from the Cooperstown Graduate Program at SUNY-Oneonta.*